

**Introduced by Senator Battin**

February 18, 2003

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An act to amend Sections 11165.7 and 11166 of the Penal Code, relating to mandated reporters.

LEGISLATIVE COUNSEL'S DIGEST

SB 250, as introduced, Battin. Mandated reporters.

Existing law, the Child Abuse and Neglect Reporting Act (CANRA), requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine.

This bill would add receptionists or administrative employees of a hospital or health facility, as defined, to the list of individuals who are mandated reporters. This bill would also provide that if a person issued a license or certificate to engage in a profession or occupation, the members of which are required to make reports pursuant to this section, fails to report an incident of known or reasonably suspected child abuse or neglect, as required, the failure to report is grounds for revocation of his or her license or certificate. Because this bill would require employees of local agencies to perform a higher level of service and change the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that

reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11165.7 of the Penal Code is amended  
2 to read:  
3 11165.7. (a) As used in this article, “mandated reporter” is  
4 defined as any of the following:  
5 (1) A teacher.  
6 (2) An instructional aide.  
7 (3) A teacher’s aide or teacher’s assistant employed by any  
8 public or private school.  
9 (4) A classified employee of any public school.  
10 (5) An administrative officer or supervisor of child welfare and  
11 attendance, or a certificated pupil personnel employee of any  
12 public or private school.  
13 (6) An administrator of a public or private day camp.  
14 (7) An administrator or employee of a public or private youth  
15 center, youth recreation program, or youth organization.  
16 (8) An administrator or employee of a public or private  
17 organization whose duties require direct contact and supervision  
18 of children.  
19 (9) Any employee of a county office of education or the  
20 California Department of Education, whose duties bring the  
21 employee into contact with children on a regular basis.  
22 (10) A licensee, an administrator, or an employee of a licensed  
23 community care or child day care facility.  
24 (11) A headstart teacher.



1 (12) A licensing worker or licensing evaluator employed by a  
2 licensing agency as defined in Section 11165.11.

3 (13) A public assistance worker.

4 (14) An employee of a child care institution, including, but not  
5 limited to, foster parents, group home personnel, and personnel of  
6 residential care facilities.

7 (15) A social worker, probation officer, or parole officer.

8 (16) An employee of a school district police or security  
9 department.

10 (17) Any person who is an administrator or presenter of, or a  
11 counselor in, a child abuse prevention program in any public or  
12 private school.

13 (18) A district attorney investigator, inspector, or local child  
14 support agency caseworker unless the investigator, inspector, or  
15 caseworker is working with an attorney appointed pursuant to  
16 Section 317 of the Welfare and Institutions Code to represent a  
17 minor.

18 (19) A peace officer, as defined in Chapter 4.5 (commencing  
19 with Section 830) of Title 3 of Part 2, who is not otherwise  
20 described in this section.

21 (20) A firefighter, except for volunteer firefighters.

22 (21) A physician, surgeon, psychiatrist, psychologist, dentist,  
23 resident, intern, podiatrist, chiropractor, licensed nurse, dental  
24 hygienist, optometrist, marriage, family and child counselor,  
25 clinical social worker, or any other person who is currently  
26 licensed under Division 2 (commencing with Section 500) of the  
27 Business and Professions Code.

28 (22) Any emergency medical technician I or II, paramedic, or  
29 other person certified pursuant to Division 2.5 (commencing with  
30 Section 1797) of the Health and Safety Code.

31 (23) A psychological assistant registered pursuant to Section  
32 2913 of the Business and Professions Code.

33 (24) A marriage, family and child therapist trainee, as defined  
34 in subdivision (c) of Section 4980.03 of the Business and  
35 Professions Code.

36 (25) An unlicensed marriage, family, and child therapist intern  
37 registered under Section 4980.44 of the Business and Professions  
38 Code.

39 (26) A state or county public health employee who treats a  
40 minor for venereal disease or any other condition.

1 (27) A coroner.

2 (28) A medical examiner, or any other person who performs  
3 autopsies.

4 (29) A commercial film and photographic print processor, as  
5 specified in subdivision (e) of Section 11166. As used in this  
6 article, “commercial film and photographic print processor”  
7 means any person who develops exposed photographic film into  
8 negatives, slides, or prints, or who makes prints from negatives or  
9 slides, for compensation. The term includes any employee of such  
10 a person; it does not include a person who develops film or makes  
11 prints for a public agency.

12 (30) A child visitation monitor. As used in this article, “child  
13 visitation monitor” means any person who, for financial  
14 compensation, acts as monitor of a visit between a child and any  
15 other person when the monitoring of that visit has been ordered by  
16 a court of law.

17 (31) An animal control officer or humane society officer. For  
18 the purposes of this article, the following terms have the following  
19 meanings:

20 (A) “Animal control officer” means any person employed by  
21 a city, county, or city and county for the purpose of enforcing  
22 animal control laws or regulations.

23 (B) “Humane society officer” means any person appointed or  
24 employed by a public or private entity as a humane officer who is  
25 qualified pursuant to Section 14502 or 14503 of the Corporations  
26 Code.

27 (32) A clergy member, as specified in subdivision (c) of  
28 Section 11166. As used in this article, “clergy member” means a  
29 priest, minister, rabbi, religious practitioner, or similar  
30 functionary of a church, temple, or recognized denomination or  
31 organization.

32 (33) Any custodian of records of a clergy member, as specified  
33 in this section and subdivision (c) of Section 11166.

34 (34) Any employee of any police department, county sheriff’s  
35 department, county probation department, or county welfare  
36 department.

37 (35) An employee or volunteer of a Court Appointed Special  
38 Advocate program, as defined in Rule 1424 of the Rules of Court.

1     (36) *Any receptionist or administrative employee of a hospital*  
2     *or health facility as defined in subdivision (a) of Section 1250 of*  
3     *the Health and Safety Code.*

4     (b) Volunteers of public or private organizations whose duties  
5     require direct contact and supervision of children are encouraged  
6     to obtain training in the identification and reporting of child abuse.

7     (c) Training in the duties imposed by this article shall include  
8     training in child abuse identification and training in child abuse  
9     reporting. As part of that training, school districts shall provide to  
10    all employees being trained a written copy of the reporting  
11    requirements and a written disclosure of the employees'  
12    confidentiality rights.

13    (d) School districts that do not train their employees specified  
14    in subdivision (a) in the duties of mandated reporters under the  
15    child abuse reporting laws shall report to the State Department of  
16    Education the reasons why this training is not provided.

17    (e) The absence of training shall not excuse a mandated  
18    reporter from the duties imposed by this article.

19    SEC. 2. Section 11166 of the Penal Code is amended to read:

20    11166. (a) Except as provided in subdivision (c), a mandated  
21    reporter shall make a report to an agency specified in Section  
22    11165.9 whenever the mandated reporter, in his or her professional  
23    capacity or within the scope of his or her employment, has  
24    knowledge of or observes a child whom the mandated reporter  
25    knows or reasonably suspects has been the victim of child abuse  
26    or neglect. The mandated reporter shall make a report to the  
27    agency immediately or as soon as is practicably possible by  
28    telephone, and the mandated reporter shall prepare and send a  
29    written report thereof within 36 hours of receiving the information  
30    concerning the incident. The mandated reporter may include with  
31    the report any nonprivileged documentary evidence the mandated  
32    reporter possesses relating to the incident.

33    (1) For the purposes of this article, "reasonable suspicion"  
34    means that it is objectively reasonable for a person to entertain a  
35    suspicion, based upon facts that could cause a reasonable person  
36    in a like position, drawing, when appropriate, on his or her training  
37    and experience, to suspect child abuse or neglect. For the purpose  
38    of this article, the pregnancy of a minor does not, in and of itself,  
39    constitute a basis for a reasonable suspicion of sexual abuse.

1 (2) The agency shall be notified and a report shall be prepared  
2 and sent even if the child has expired, regardless of whether or not  
3 the possible abuse was a factor contributing to the death, and even  
4 if suspected child abuse was discovered during an autopsy.

5 (3) A report made by a mandated reporter pursuant to this  
6 section shall be known as a mandated report.

7 (b) (1) Any mandated reporter who fails to report an incident  
8 of known or reasonably suspected child abuse or neglect as  
9 required by this section is guilty of a misdemeanor punishable by  
10 up to six months confinement in a county jail or by a fine of one  
11 thousand dollars (\$1,000) or by both that fine and punishment.

12 (2) *In addition, if a person issued a license or certificate to*  
13 *engage in a profession or occupation, the members of which are*  
14 *required to make reports pursuant to this section fails to report an*  
15 *incident of known or reasonably suspected child abuse or neglect,*  
16 *as required, the failure to report is grounds for revocation of that*  
17 *license or certificate.*

18 (c) (1) A clergy member who acquires knowledge or a  
19 reasonable suspicion of child abuse or neglect during a penitential  
20 communication is not subject to subdivision (a). For the purposes  
21 of this subdivision, “penitential communication” means a  
22 communication, intended to be in confidence, including, but not  
23 limited to, a sacramental confession, made to a clergy member  
24 who, in the course of the discipline or practice of his or her church,  
25 denomination, or organization, is authorized or accustomed to  
26 hear those communications, and under the discipline, tenets,  
27 customs, or practices of his or her church, denomination, or  
28 organization, has a duty to keep those communications secret.

29 (2) Nothing in this subdivision shall be construed to modify or  
30 limit a clergy member’s duty to report known or suspected child  
31 abuse or neglect when the clergy member is acting in some other  
32 capacity that would otherwise make the clergy member a  
33 mandated reporter.

34 (3) (A) On or before January 1, 2004, a clergy member or any  
35 custodian of records for the clergy member may report to an  
36 agency specified in Section 11165.9 that the clergy member or any  
37 custodian of records for the clergy member, prior to January 1,  
38 1997, in his or her professional capacity or within the scope of his  
39 or her employment, other than during a penitential  
40 communication, acquired knowledge or had a reasonable

1 suspicion that a child had been the victim of sexual abuse that the  
2 clergy member or any custodian of records for the clergy member  
3 did not previously report the abuse to an agency specified in  
4 Section 11165.9. The provisions of Section 11172 shall apply to all  
5 reports made pursuant to this paragraph.

6 (B) This paragraph shall apply even if the victim of the known  
7 or suspected abuse has reached the age of majority by the time the  
8 required report is made.

9 (C) The local law enforcement agency shall have jurisdiction  
10 to investigate any report of child abuse made pursuant to this  
11 paragraph even if the report is made after the victim has reached  
12 the age of majority.

13 (d) Any commercial film and photographic print processor  
14 who has knowledge of or observes, within the scope of his or her  
15 professional capacity or employment, any film, photograph,  
16 videotape, negative, or slide depicting a child under the age of 16  
17 years engaged in an act of sexual conduct, shall report the instance  
18 of suspected child abuse to the law enforcement agency having  
19 jurisdiction over the case immediately, or as soon as practically  
20 possible, by telephone, and shall prepare and send a written report  
21 of it with a copy of the film, photograph, videotape, negative, or  
22 slide attached within 36 hours of receiving the information  
23 concerning the incident. As used in this subdivision, "sexual  
24 conduct" means any of the following:

25 (1) Sexual intercourse, including genital-genital, oral-genital,  
26 anal-genital, or oral-anal, whether between persons of the same or  
27 opposite sex or between humans and animals.

28 (2) Penetration of the vagina or rectum by any object.

29 (3) Masturbation for the purpose of sexual stimulation of the  
30 viewer.

31 (4) Sadomasochistic abuse for the purpose of sexual  
32 stimulation of the viewer.

33 (5) Exhibition of the genitals, pubic, or rectal areas of any  
34 person for the purpose of sexual stimulation of the viewer.

35 (e) Any other person who has knowledge of or observes a child  
36 whom he or she knows or reasonably suspects has been a victim  
37 of child abuse or neglect may report the known or suspected  
38 instance of child abuse or neglect to an agency specified in Section  
39 11165.9.



(f) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(g) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(h) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.



(i) A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.